

**STATE OF VERMONT
BOARD OF MEDICAL PRACTICE**

In Re:)	
)	
David S. Chase)	MPC 15-0203
)	
Respondent)	

SPECIFICATION OF CHARGES

Now Comes the State of Vermont, by and through William Sorrell, Attorney General, and undersigned counsel, and avers the following:

JURISDICTION

1. The Vermont Medical Practice Board (hereinafter "Board") has jurisdiction over this matter as David S. Chase (hereinafter "Respondent") is currently holds a suspended licensed to practice medicine in the State of Vermont, number 042-0003416.

I. FACTUAL ALLEGATIONS

A. Allegations based on Patients' Statements

Complaint of Helene Nordstrom

2. On January 31, 2003, Helene Nordstrom (hereinafter "Complainant") filed a complaint against Respondent.
3. According to the Complainant, she saw Respondent on January 17, 2003 for blurry vision and headaches from eye strain.
4. Respondent examined Complainant while her eyes were dilated and diagnosed Complainant with dense nuclear cortical cataracts.

5. Respondent recommended to Complainant that she have cataract surgery and informed Complainant that she did not need to obtain a second opinion.
6. In Complainant's records Respondent recorded that he gave Complainant a second opinion.
7. Respondent scheduled a pre-operative visit for Complainant for January 20, 2003, which Complainant subsequently cancelled.
8. Upon information and belief, Respondent falsified Complainant's results to support his recommendation for cataract surgery.
9. On January 23, 2003 Complainant saw Doctors Eriksson and Reid (optometrists) at their offices in Essex Junction, Vermont. Both optometrists examined Complainant and informed her that they were unable to find anything that warranted surgery.
10. Complainant underwent an independent evaluation on June 30, 2003 with Dr. Patrick J. Morhun, an ophthalmologist located in Lebanon, New Hampshire.
11. Without knowledge of the specific complaint against Respondent, Dr. Morhun concluded that Complainant's corrected vision was 20/15 right eye and 20/15 left eye. Dr. Morhun states that these results are better than 20/20 vision, which is usually considered "perfect vision." Dr. Morhun found no evidence of cataract formation.

12. Dr. Morhun then reviewed Respondent's records of Complainant so as to provide an opinion as to whether or not Respondent's recommendation for cataract surgery met the standard of care.
13. Dr. Morhun stated that even offering cataract surgery to Complainant "falls below the standard of care in the face of the total lack of cataract formation."
14. Dr. Morhun stated that the "standard of care would be to indicate the patient's best spectacle corrected visual acuity somewhere in the chart." Dr. Morhun notes that Respondent's determination in the Complainant's initial eye examination that Patient A' vision was 20/50 in each eye would be interpreted as Patient A's best spectacle corrected vision. However, in Dr. Morhun's examination of Complainant, her visual acuity with glasses was 20/15 in each eye. Dr. Morhun "cannot explain why [Patient A] was not able to see better" on the day Respondent examined Complainant and stated he is "very concerned about the inconsistency."
15. Dr. Morhun also stated that the "first alternative to operating on someone would be prescribing spectacle correction." Dr. Morhun notes that the record does not indicate spectacle correction was discussed and does not indicate any evidence of testing for a possible change in prescription for the Complainant's glasses.
16. According to Dr. Morhun, Respondent's plan for Complainant was to perform cataract surgery on the left eye and then consider cataract surgery for the right eye "if and when [Complainant] was ready." Because

the first surgery would have created a power difference between the vision in each eye, a second operation would have been required within one-two weeks. Respondent was, according to Dr. Morhun, "planning on two operations when none is indicated."

17. Dr. Morhun notes that Respondent stated in his response to Complainant's complaint that a second opinion might be that she did not require surgery because she could see well with glasses.
18. According to Dr. Morhun, if Complainant could see well with glasses then she does not require surgery and the risks inherent in surgery. The risks in Complainant's case would be "infection, bleeding, loss of vision, and retinal detachment (which may be as high as 5% per eye . . .)."
19. Dr. Morhun concluded that "the examination and recommendations of [Respondent] for [Complainant] on January 17, 2003 fall below the standard of care expected for an ophthalmic surgeon."

Patient #2.

20. Patient #2, aged 64, had already had one eye operated on by Respondent, for cataracts and was scheduled for July 22, 2003 to have the second eye done by Dr. Chase.
21. According to Patient #2, Respondent had given her the glare test after her eyes were dilated.
22. Patient #2 was examined by Dr. Alan E. Irwin, an ophthalmologist at University Health Center, Burlington, Vermont on July 25, 2003. Dr. Irwin examined and tested and found that Patient #2 had 20-20 +2 in the

eye. According to Dr. Irwin what this means is that she has 20-20 vision in that eye plus she can read 2 letters on the 20-15 line. Dr. Irwin also stated that there was no sign of any cataract in that eye.

23. Dr. Irwin stated that Patient #2 was very lucky not to have surgery on the remaining eye.

Patient #3

24. Respondent examined Patient #3 about 2 to 3 years ago. Patient #3 complained that he could not see well at night and that he had a glare problem. According to Patient #3, his vision was 20-20 at the time. Respondent tested Patient #3 and informed patient #3 that he needed cataract surgery. Respondent told Patient #3 not to get a second opinion because he was the only one that could do this surgery.

25. Patient #3 stated that both eyes were operated on and he now believes that he no longer has 20-20 vision. According to Patient #3, his right eye can only see far and his left eye can only see near. Patient #3 stated that the glare at night never got better.

B. Allegations Based On Statements of Respondent's Office Staff.

Amy Landry

26. Amy Landry had worked for Respondent for eleven months but left his employ on July 11, 2003 because she was unhappy with Respondent.

27. Ms. Landry stated that she believed Respondent crafted records to force patients into cataract surgery.

28. According to Ms. Landry, recording of tests results was different for a patient that was above the age of approximately 35 and had no prior cataract surgery (hereinafter referred to as "target group"). For patients in the target group, technicians were instructed not to record any test results in the chart, but instead to write testing results on post-it paper.
29. One of the tests performed by the technician is a Contrast Sensitivity Test ("CST") with Brightness Acuity Test ("BAT"). As with the other tests for patients in the target group, the results of the CST with BAT were recorded on post-it paper.
30. Ms. Landry stated that if Respondent was dissatisfied with the results of the CST with BAT he would instruct the technician to perform the CST with BST again after the patient's eyes had been dilated. According to Ms. Landry, results from CST with BAT after dilation are always going to be bad.
31. For patients in the target group, the results of the CST with BAT (either before or after are recorded in the visual acuity space in the record instead of basic visual acuity, which is measured by the Snellen chart.
32. After the tests were performed Respondent would conduct a slit lamp where Respondent would, with patients of the target group, begin what Ms. Landry characterizes as a "spiel" concerning the presence of cataracts.
33. Respondent had his examinations transcribed and a "script" on an index card was taped to the machine in the examination for the benefit of the "scribe."

34. Ms. Landry stated that the speech about cataracts is verbatim almost every time.

35. Ms. Landry stated that in his speech about cataracts Respondent tells every patient they don't need a second opinion, that he (Respondent) is going to give the patient a second opinion.

Dr. Vincent J. DeVita

37. Vincent J. Devita, O.D., F.A.A.O, a Vermont licensed optometrist, had worked for Respondent for the past 11 months. Dr. Devita said the office procedure was not to write the test results in the patient's chart but to record them on a yellow sticky note that would be attached to the chart. Dr. Devita did not agree with this practice. Dr. Devita stated that the office technicians told him that often Respondent would have them conduct additional testing after the eye was dilated, which would skew the test result. Dr. Devita objected to Respondent that no other doctor would do this, and Respondent replied that he did not care what other doctors would do. Dr. Devita saw that testing results done with a light glaring into the patient's eyes were being recorded in the standard visual acuity portion of the patients' charts, where they did not belong.

38. Dr. Devita stated that the records in the office were color-coded. Patients that had blue charts had cataract surgery and brown charts were those that had not yet had cataract surgery.

39. Approximately one week after the arrival of a new Business Manager, stated Dr. Devita, he had a meeting with Respondent and Respondent's

wife and expressed his concerns. Dr. Devita said his employment was terminated July 3, 2003, and he was given no notice but simply told to leave.

Stephen Green

40. Stephen Green is the former business manager of the Medical Office of Respondent. Mr. Green has a Masters Degree in Business from Cornell University and has worked in the optical profession for approximately forty years.
41. Mr. Green stated that when he took over as business manager he did some statistics to determine how the medical office was doing financially. Mr. Green stated that he found the amount of patients that Respondent seen has dropped by 50% over the past ten years. Mr. Green stated that during that same time period, the surgical rate for cataract surgeries has remained constant, about 350 cataract surgeries per year.
42. Mr. Green stated further that two years ago 1 out of every 16 patients were getting cataract surgery and one year ago, 1 out of every 12 patients were getting cataract surgery and now presently, 1 out of every 10 patients are getting cataract surgery. Mr. Green stated that Dr. Chase's office sees about 22 to 23 patients per day.

Kathleen Miceli

43. Ms. Miceli was a former employee of Respondent and worked for him as an "Ophthalmologist Assistant" from November 2001 to April 2002.

44. Ms. Miceli stated that her primary duty was to be in the exam room with Respondent and “scribe” (record what Respondent stated in the exam room). Ms. Miceli stated that for the most part she wrote directly into the patient’s chart.

45. Ms. Miceli stated everything in Respondent’s office was very “regimented” and there were “cheat sheets” for everything. Ms. Miceli explained that everything was written down for what needed to be put in the patient’s charts.

46. Ms. Miceli stated that Respondent booked his office appointments very heavily and maybe 40 people per day would be seen between the two doctors in the office.

47. Ms. Miceli stated that she believed that Respondent really pushed patients towards cataract surgery. Ms. Miceli stated that typically, Respondent would ask a patient if he or she had trouble seeing at night while driving their car. Ms. Miceli stated that if the patient stated “no”, then Respondent would ask them if they had trouble seeing at night when it is raining, and when they meet an oncoming vehicle with their headlights on. Ms. Miceli stated that typically the patient would then say “yes”. Ms. Miceli stated that then Respondent would tell her to write down, “Patient can’t drive safely at night, needs cataract surgery”.

48. Ms. Miceli stated that Respondent always wanted the patient to get surgery as quickly as possible and if the patient asked him if they could get a second opinion, he would normally get angry and tell them that he

was their second opinion. According to Ms. Miceli, Respondent would tell the patients that he had more experience in cataract removal and he also had another certification that other doctors didn't have.

49. Ms. Miceli stated that the CST with BAT simulates your vision's ability with lights glaring into your eyes, such as night driving. Ms. Miceli stated that sometimes this test was done and then a patient's eyes were dilated and then the test was done again. Ms. Miceli stated that she believes that if the first test that was done didn't show a bad result for the patient, then Respondent would order the second test after the person's eyes were dilated and then when the next test was given, the patient's eyes would be blurry so a bad result would be obtained.

50. Ms. Miceli stated that one time in the exam room, she saw Respondent take the form that had the first test results on it and put it in his coat pocket. Ms. Miceli stated that a second test was done and only the second test results were put in the patient's chart. Ms. Miceli stated that the second test was done after the patient's eyes were dilated.

51. Ms. Miceli stated that Respondent was not pleasant with his patients or his staff. Ms. Miceli stated that Respondent did not like to be questioned. He said on occasion that he was the boss and what he said goes. Ms. Miceli stated that she was in the exam room one time when Respondent yelled at a patient when the patient questioned him about having cataract surgery.

52. Ms. Miceli stated that she left the employ of Respondent because she felt very uncomfortable with the way that Respondent pushed cataract surgery on his patients.

C. Allegations Based on Statements from Ophthalmologists.

Dr. Thomas Cavin

53. Dr. Thomas Cavin is an ophthalmologist and has practiced in the Burlington area for 18 years.

54. Dr. Cavin stated that since he has been practicing, he has had over 10 patients that had been seen by Respondent and had come to him for a second opinion. Dr. Cavin stated that each of the patients told him that Respondent had recommended they undergo cataract surgery. Each of the patients wanted Dr. Cavin's opinion as to whether such surgery was needed.

55. Dr. Cavin stated that he did find patients that in his opinion did not need cataract surgery, however in some of the patients, he agreed with Dr. Chase's opinion.

56. Dr. Cavin stated that approximately 5 years ago, he gave a second opinion to a patient of Dr. Chase's that cataract surgery was not necessary. Dr. Cavin stated that Dr. Chase called him and stated "couldn't you see the cataract"? Dr. Cavin stated that they had a discussion about this patient and they ended up disagreeing.

57. Dr. Cavin stated that when he would disagree with another doctor's findings, he would send a letter to that physician for the patient's file if the patient asked them to.

Dr. Edwin Guilfoxy

58. Dr. Edwin Guilfoxy is an ophthalmologist and has practiced in the Essex Jct. Area for 20 years.

59. Dr. Guilfoxy stated that for the past twenty years he has been aware that Dr. Chase was doing more cataract surgeries than probably were needed. Dr. Guilfoxy stated that he has had at least 50 patients of Dr. Chase's that came to him for second opinions and he disagreed with Dr. Chase that any of them needed cataract surgery.

Dr. Alan E. Irwin

60. Dr. Alan E. Irwin is an ophthalmologist and has practiced in the Burlington area for about 20 years.

61. Dr. Irwin stated that during the past 20 years he would see a patient of Respondent's about every eight to ten weeks. Dr. Irwin stated further the patient would ask him for a second opinion because Dr. Chase wanted to perform cataract surgery on them. Dr. Irwin stated that about 95% of the time, he disagreed with Dr. Chase's diagnosis.

62. Dr. Irwin stated that he never got a referral from Dr. Chase regarding any of his patients and the ones that came in for a second opinion, came in on their own. Dr. Irwin stated that he was told by at least 5 patients that

Dr. Chase had advised them not to see him because he (Dr. Irwin) wouldn't be able to see the cataract.

II. CHARGES OF UNPROFESSIONAL CONDUCT

A. Charges of Unprofessional Conduct Related To Respondent's Treatment of Complainant.

Count I-Conduct Which Evidences Unfitness To Practice Medicine Pursuant to 26 V.S.A. §1354(a)(7)

63. The State hereby incorporates the allegations in Paragraphs 1-62, above.

64. Respondent's recommendation to Complainant that she undergo cataract surgery when there was no evidence of cataract formation constitutes conduct which evidences unfitness to practice under 26 V.S.A. §1354(a)(7).

Count II-Conduct Which Evidences Unfitness To Practice Medicine Pursuant to 26 V.S.A. §1354(a)(7)

65. The State hereby incorporates the allegations in Paragraphs 1-64, above.

66. Respondent's direction to Complainant that she not seek a second opinion constitutes conduct which evidences unfitness to practice medicine under 26 V.S.A. §1354(a)(7).

Count III-Conduct Which Evidences Unfitness To Practice Medicine Pursuant to 26 V.S.A. §1354(a)(7)

67. The State hereby incorporates the allegations in Paragraphs 1-66, above.

68. Respondent's falsification of Complaint's records to support his recommendation to Complainant for unnecessary cataract surgery constitutes conduct which evidences unfitness to practice medicine under 26 V.S.A. §1354(a)(7).

**Count IV-Conduct Which Evidences Unfitness To Practice Medicine
Pursuant to 26 V.S.A. §1354(a)(7)**

69. The State hereby incorporates the allegations in Paragraphs 1-68, above.

70. Respondent's testing of Complainant's vision after dilation in order to support Respondent's recommendation for cataract surgery constitutes conduct which evidences unfitness to practice medicine under 26 V.S.A. §1354(a)(7).

**Count V- Willful Misrepresentation in Treatment Under 26 V.S.A.
§1354(a)(14)**

71. The State hereby incorporates the allegations in Paragraphs 1-70, above.

72. Respondent's recommendation to Complainant that she undergo unnecessary cataract surgery constitutes willful misrepresentation in treatment under 26 V.S.A. §1354(a)(14).

**Count VI- Willfully Making and Filing False Reports or Records in Practice
as a Physician Under 26 V.S.A. §1354(a)(8)**

73. The State hereby incorporates the allegations in Paragraphs 1-72, above.

74. Respondent's falsification of Complainant's records to support his recommendation to Complainant for unnecessary cataract surgery constitutes unprofessional conduct under 26 V.S.A. § 1354(a)(8).

Count VII-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

75. The State hereby incorporates the allegations in Paragraphs 1-74, above.

76. Respondent's recommendation to Complainant that she undergo cataract surgery when there was no evidence of cataract formation constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count VIII-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

77. The State hereby incorporates the allegations in Paragraphs 1-77, above.

78. Respondent's direction to Complainant that she not seek a second opinion constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count IX-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

79. The State hereby incorporates the allegations in Paragraphs 1-78, above.

80. Respondent's falsification of Complainant's records to support his recommendation to Complainant for unnecessary cataract surgery constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count X-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

81. The State hereby incorporates the allegations in Paragraphs 1-80, above.

82. Respondent's testing of Complainant's vision after dilation in order to support Respondent's recommendation for cataract surgery constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count XI-Gross Failure to Use and Exercise on a Particular Occasion that Degree of Care, Skill, and Proficiency Which is Commonly Exercised by the Ordinary Skillful, Careful and Prudent Physician Engaged in Similar Practice Under the Same or Similar Conditions Under 26 V.S.A. §1354(a)(22)

83. The State hereby incorporates the allegations in Paragraphs 1-82, above.

84. Respondent's treatment of Complainant on January 17, 2003 constitutes a gross failure to use on a particular occasion that degree of care, skill, and proficiency which is commonly exercised by the ordinary skillful, careful and prudent physician engaged in similar practice under the same or similar conditions under 26 V.S.A. §1354(a)(22).

Count XII-Failure To Practice Competently Under 26 V.S.A. §1354(b)

85. The State hereby incorporates the allegations in Paragraphs 1-84, above.

86. Respondent's treatment of Complainant on January 17, 2003 exhibits both (a) a performance of unsafe or unacceptable patient care and (b) a failure to conform to the essential standards of acceptable and prevailing standards and thereby constitutes a failure to practice competently under 26 V.S.A. §1354(b).

B. Charges of Unprofessional Conduct Based on Respondent's Pattern and Practice.

Count XIII-Conduct Which Evidences Unfitness to Practice Medicine Pursuant to 26 V.S.A. §1354(a)(7)

87. The State hereby incorporates the allegations in Paragraphs 1-86, above.

88. Respondent's pattern and practice of recommending to patients on two or more occasions that they undergo unnecessary cataract surgeries constitutes conduct which evidences unfitness to practice under 26 V.S.A. §1354(a)(7).

Count XIV-Conduct Which Evidences Unfitness To Practice Medicine Pursuant to 26 V.S.A. §1354(a)(7)

89. The State hereby incorporates the allegations in Paragraphs 1-88, above.

90. Respondent's pattern and practice of directing patients on two or more occasions not to seek a second opinion constitutes conduct which evidences unfitness to practice medicine under 26 V.S.A. §1354(a)(7).

Count XV-Conduct Which Evidences Unfitness To Practice Medicine Pursuant to 26 V.S.A. §1354(a)(7)

91. The State hereby incorporates the allegations in Paragraphs 1-90, above.

92. Respondent's pattern and practice, on two or more occasions, of falsifying patient records by misrepresenting test results and performing visual tests after dilation to support his recommendations for unnecessary cataract surgeries constitutes conduct which evidences unfitness to practice medicine under 26 V.S.A. §1354(a) (7).

Count XVI- Willful Misrepresentation in Treatment Under 26 V.S.A. §1354(a)(14).

93. The State hereby incorporates the allegations in Paragraphs 1-92, above.
94. Respondent's pattern and practice of recommending to patients, on two or more occasions, that they undergo unnecessary cataract surgeries constitutes willful misrepresentations in treatments under 26 V.S.A. §1354(a)(14).

Count XVII-Willfully Making and Filing False Reports or Records in Practice as a Physician Under 26 V.S.A. §1354(a)(8)

95. The State hereby incorporates the allegations in Paragraphs 1-94, above.
96. Respondent's pattern and practice, on two or more occasions, of falsifying patients' records by misrepresenting test results and performing visual tests after dilation to support his recommendations to them for unnecessary cataract surgeries constitutes unprofessional conduct under 26 V.S.A. § 1354 (a)(8).

Count XVIII-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

97. The State hereby incorporates the allegations in Paragraphs 1-96, above.
98. Respondent's pattern and practice of recommending to patients on two or more occasions that they undergo unnecessary cataract surgeries constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count XIX-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

99. The State hereby incorporates the allegations in Paragraphs 1-98, above.

100. Respondent's pattern and practice of directing patients on two or more occasions not to seek a second opinion constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count XX-Immoral, Unprofessional or Dishonest Conduct Under 26 V.S.A. §1398.

101. The State hereby incorporates the allegations in Paragraphs 1-100, above.

102. Respondent's pattern and practice of falsifying patient records on two or more occasions by misrepresenting test results and performing visual tests after dilation to support his recommendations to them for unnecessary cataract surgeries constitutes immoral, unprofessional or dishonest conduct under 26 V.S.A. §1398.

Count XXI-Consistent Improper Utilization of Services Under 26 V.S.A. §1354(a)(18)

103. The State hereby incorporates the allegations in Paragraphs 1-102, above.

104. Respondent's pattern and practice of improper use of CST with BAT after dilation on two or more occasions constitutes consistent improper utilization of services under 26 V.S.A. §1354(a)(18)

Count XXII-Consistent use of Non-accepted Procedures Which Have a Consistent Detrimental Effect Upon Patients Under 26 V.S.A. §1354(a)(19)

105. The State hereby incorporates the allegations in Paragraphs 1-104, above.

106. Respondent's pattern and practice of improper use of CST with BAT after dilation on two or more occasions to support his recommendations to patients that they undergo unnecessary cataract surgeries constitutes consistent use of non-accepted procedures which have a consistent detrimental effect upon patients under 26 V.S.A. §1354(a)(19).

Count XXIII-Failure to Use and Exercise on Repeated Occasions, that Degree of Care, Skill, and Proficiency Which is Commonly Exercised by the Ordinary Skillful, Careful and Prudent Physician Engaged in Similar Practice Under the Same or Similar Conditions Under 26 V.S.A. §1354(a) (22)

107. The State hereby incorporates the allegations in Paragraphs 1-106, above.

108. Respondent's conduct as alleged above constitutes failure to use and exercise on repeated occasions that degree of care, skill, and proficiency which is commonly exercised by the ordinary skillful, careful and prudent physician engaged in similar practice under the same or similar conditions under 26 V.S.A. §1354(a) (22).

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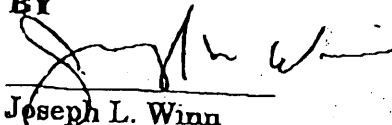
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WHEREFORE, the State of Vermont moves the Board to **REVOKE**
Respondent's license to practice medicine.

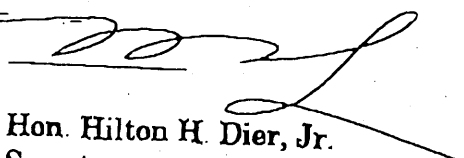
Dated at Montpelier, Vermont this 29th day of July, 2003.

**WILLIAM SORRELL
ATTORNEY GENERAL
STATE OF VERMONT**

BY


Joseph L. Winn
Assistant Attorney General

Charges filed


Hon. Hilton H. Dier, Jr.
Secretary

Office of the
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